



America's Notaries TRUST ASN.

Best Practices and Ethical Choices

Alabama Notary Conference 2010 ♦ October 21, 2010

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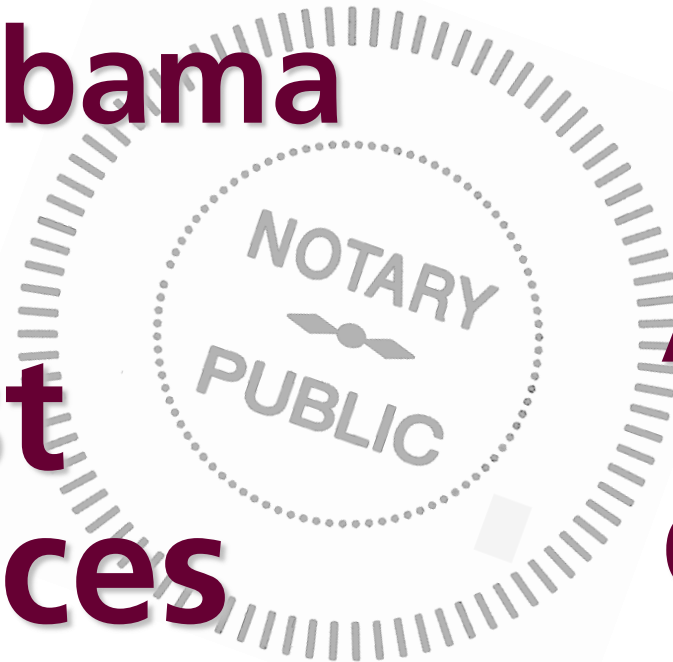


Your guidance:

**Code of
Alabama**

**Best
Practices**

**Attorney
General
Opinions**





Best Practices:

Techniques or methodologies that, through experience and research, have proven to reliably lead to a desired result.

*For notaries, **fundamentals** that are*

- *Widely recognized*
 - *Widely accepted*
 - *Widely utilized*



Today:

**Fundamentals of
Best Practices**



**Most common
notarial acts**

**Situations
demanding ethical
choices**

**Steps to an Expert
Notarial Act**



Authorized Duties *(Code of Ala. 36-20-5):*

**Administer oaths • Take acknowledgments or proofs
Issue protests • “Other such powers”**

Most common by far:
Administer oaths
Take acknowledgments

Document-Signing Notarial Acts

Oath	Acknowledgment
➤ Signer swearing to the <u>truthfulness</u> of the document	➤ Signer's declaration that he/she signed the document voluntarily, for its stated purpose
<i>Subscribed and sworn to before me by John Doe this X day of (month) (year)...</i>	<i>Acknowledged before me by John Doe this X day of (month) (year)...</i>
➤ Signs document in presence of notary	➤ Document can be previously signed, but signature must be <u>original</u> . (Sec. of State recommends always witnessing the signature)
<i>"Do you solemnly swear that the contents of this document are true, so help you God?"</i>	<i>"Do you acknowledge signing this document willingly, for its stated purpose?"</i>
➤ Typical documents: applications, affidavits... the signer supplied certain information.	➤ Typical documents: contracts, deeds, powers of attorney... the signer is agreeing to terms in the document.





Examples from Code of Alabama:

Absentee Ballot Affidavit (COA 17-11-7)

State of Alabama
County of _____

I, the undersigned, do swear (or affirm) that:

(1) I am a resident of _____ County in the State of Alabama.

(2) My place of residence in Alabama is:

(Etc.--Statements by Affiant)

(Signature or mark of voter.)

(Printed name of voter.)

(Etc.)

Sworn to and subscribed before me this _____ day of _____, 2__.

I certify that the affiant is known (or made known) to me to be the identical party he or she claims to be.

(Signature of official)

(Title of official)

(Address of official)

Form of Acknowledgment (COA 35-4-29)

State of Alabama
County of _____

I, _____, (Notary Public), hereby certify that _____, whose name is signed to the foregoing conveyance, and who is known to me, **acknowledged before me** on this day that, being informed of the contents of the conveyance, **he/she executed the same voluntarily** on the day the same bears date. Given under my hand this _____ day of _____, 20__.

(Signature)

Notary Public
My Commission expires:



Recap...

Most common authorized duties –
oath, acknowledgment for the signing of a document.

Oath: swearing that the document statement/content is true.

Acknowledgment: declaration that document was signed
voluntarily, for its stated purpose

Key words in the document's notarial statement will tell
you which of these acts is required.



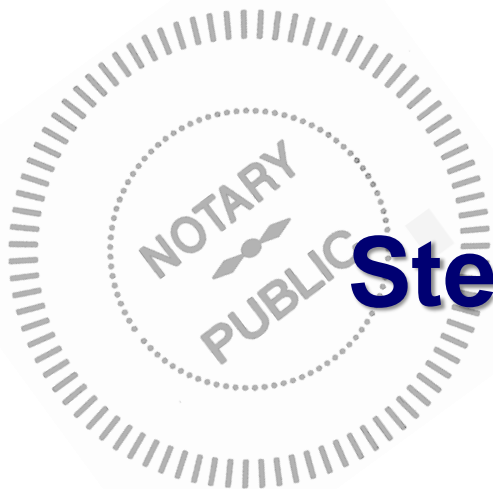
Performing Notarial Acts

**Knowledge of
required act**

Best practice =

**“Technique or methodology”
proven over time**

**Expert
notarial act**



Steps to an Expert Notarial Act

Steps to an Expert Notarial Act:

1 – Require the signer's presence.

2 – Examine the document.

3 – Positively identify the signer.

4 – Signer signs the document.

5 – Perform the verbal ceremony.

6 – Complete the notarial certificate.

7 – Make the register entry.



1 – Require the signer's presence

The “golden rule” of notarization!

Necessary for:

- ❖ Properly identifying the signer;
- ❖ Assessing comprehension and voluntary nature of signing (no coercion);
- ❖ Verbal exchange of oath, or acknowledgment

NOT negotiable; NO exceptions!



2 – Examine the document

Necessary to:

- ❖ Assess document completeness (*no blanks, missing pages*).
- ❖ Determine the named signer, and which notarial act is required.
- ❖ Examine signature... Original, “wet-ink.”
- ❖ Check document date; not later than date of notarization.
- ❖ Determine facts necessary for an accurate description of the document in your register.





3 – Positively identify the signer

❖ An essential for preventing fraud.

❖ **Alabama:** Personal knowledge; satisfactory evidence.

Knowledge of a person's identity based on regular interaction over a period of time.

The diagram consists of two light blue circles. A red arrow points from the text "Personal knowledge; satisfactory evidence." to the left circle. Another red arrow points from the same text to the right circle.

A government-issued identification document (*AG Opinion 1998-116*)

Photo ID preferable, but not mandatory if not available.

Best: Gov't issued, current, with photo ID, and signature.

4 – Signer signs the document.

- ❖ Oath notarial act – document **MUST** be signed in notary's presence.
(“Sworn to and subscribed before me...”)
- ❖ Acknowledgment notarial act – document may be signed previously; however Sec. of State recommends witnessing the signature.



5 – Perform the verbal ceremony.

Essence of the notarial act – how the signer swears to the truthfulness of the document (oath), or declares he/she signed it voluntarily for its stated purpose (acknowledgment).

❖ Oath verbal ceremony:

“Do you swear under penalties of perjury that the contents of this document are true, so help you God?”

❖ Acknowledgment verbal ceremony:

“Do you acknowledge signing this document voluntarily, for its stated purpose?”



6 – Complete the notarial certificate.

Venue – *where* the notarial act occurred.

State of Alabama
County of Montgomery

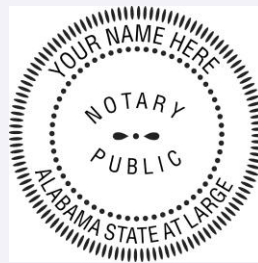
Date of notarial act – exact date, never backdate or postdate your certificate.

Sworn to and subscribed before me by
John Doe, on this
21st day of October, 2010.

Name of signer – person who appeared before you for the notarial act.

Notary's signature – exactly as commissioned.

Jane Notary
Notary Public
My commission expires: mm/dd/yr



Seal – not required but recommended; do not cover any writing or text.

More on the notarial certificate:

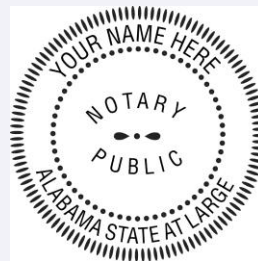
Certificate must reflect facts of the notarial act.

- Don't certify to facts that are not true or that did not occur.
- If necessary, correct the certificate.

Notary did not personally know John Doe; she relied on an ID document. Certificate must be corrected.

State of Alabama
County of Montgomery

Sworn to and subscribed before me by John Doe, ~~who is personally known to~~ *JN*
JN ~~me~~, on this 21st day of October,
2010.



Jane Notary
Notary Public

My commission expires: mm/dd/yr

1-REQUIRE SIGNER'S PRESENCE ● 2-EXAMINE THE DOCUMENT ● 3-POSITIVELY IDENTIFY THE SIGNER
4-SIGNER SIGNS THE DOCUMENT ● 5-PERFORM THE VERBAL CEREMONY
6-COMplete THE NOTARIAL CERTIFICATE ● 7-MAKE THE REGISTER ENTRY

7 – Make your register entry.

Required in Alabama, required or strongly recommended everywhere.

SIGNER'S PRINTED NAME: Jane Doe		SIGNER'S SIGNATURE: <i>Jane Doe</i>		DAYTIME PHONE: (333) 444-5555	
SIGNER'S COMPLETE ADDRESS (STREET, CITY, STATE, ZIP): 123 Main Street, Montgomery, AL 45678					
NAME/DESCRIPTION OF DOCUMENT: Affidavit; 1 pg.	DATE OF DOCUMENT: 10-20-10	DATE/TIME, NOTARIZATION 10-21-10; 3pm	<input checked="" type="checkbox"/> OATH [] ACKNOWLEDGMENT OTHER (DESCRIBE):	FEE: N/C	
SIGNER WAS [] PERSONALLY KNOWN <input checked="" type="checkbox"/> PRODUCED ID ID TYPE / EXPIRES: Ala. Driver's License; expires 6-30-2011			THUMBPRINT (WHEN REQUIRED)		
COMMENTS OR ADDITIONAL REQUIRED INFORMATION:					





Recap...

Most common authorized duties –
oath, acknowledgment for the signing of a document.

Steps to an Expert Notarial Act:

- 1 – Require the signer's presence.
- 2 – Examine the document.
- 3 – Positively identify the signer.
- 4 – Signer signs the document.
- 5 – Perform the verbal ceremony.
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Unlicensed Practice of Law

The Basics of UPL Avoidance:

- ☐ NEVER use the term “Notario Publico”
- ☐ Do NOT assist in drafting of a document for notarization
- ☐ Never offer your opinion on the contents or effects of the document
- ☐ Decline to “help” the signer with any aspects of the transaction besides notarization
- ☐ If advertising in a language other than English, include a disclosure that you are not an attorney
- ☐ Don’t choose the notarial act, the signer must
- ☐ Don’t add unnecessary or unauthorized information to the document; don’t tell the signer to do so (workaround language)



Ethical Choices in Challenging Situations

1. Document is not complete... blanks, missing pages, missing attachment or addendum	<ul style="list-style-type: none">a) "Office use" blanks okayb) Ask signer to address any other blanks; if he/she cannot, guidance must be obtainedc) Insist on ALL pages and attachments/addendums
2. No notarial certificate	<ul style="list-style-type: none">a) Explain oath/affirmation versus acknowledgment, and ask signer to chooseb) Show certificate samples to help illustrate differencec) Resist the urge to choose the notarial certificate yourself



3. Signer appears to be vulnerable; being coerced or threatened.

- a) Ask if you may speak with the signer alone, to assess comprehension and willingness.
- b) Refuse to proceed if you believe the signer is being pressured.

4. Customer asks you to post-date notarial certificate.

- a) Notarial certificate **MUST** display actual date of notarization.
- b) Decline the notarization and ask the signer to return on the later date.



5. You may gain a financial or material benefit from the document transaction.	<ul style="list-style-type: none">a) Your impartiality is essential; you must not proceed if any possible conflict of interest exists.b) Find another notary who can perform the notarization.
6. You suspect the signer's ID might be fake, or some other fraud might be attempted.	<ul style="list-style-type: none">a) Never proceed if you think there may be fraud involved. You may decline by explaining you are not comfortable with this particular notarization.



- | | |
|---|---|
| <p>7. Document is in a foreign language, you are not fluent... you cannot communicate with signer in a shared language.</p> | <ul style="list-style-type: none">a) If you cannot confidently assess the document's eligibility for notarization, you must decline.b) If you cannot communicate directly with the signer, you must decline.c) Offer to help the client find a notary who is fluent in the language of the document; try online locator service.d) Completed notarial certificate MUST be in English. |
|---|---|



- | | |
|---|---|
| <p>8. Customer is requesting or expecting action that is not an authorized notarial duty... “notarize this photograph,” “certify this translation,” “just verify this signature...”</p> | <ul style="list-style-type: none">a) IMPERATIVE that you can recognize when the requested action is not a notarial act.b) Explain this to the customer.c) Describe the acts that you are allowed to do, ask the customer to choose (oath, acknowledgment).d) Direct customer to the document originator, recipient or an attorney for guidance...exercise extreme caution in discussing what to do with document if notarization is not possible. |
|---|---|





Thank you!


Why We Need Notaries Public

Imagine if there were no Notaries in the United States. People would execute documents without the safeguards provided by a Notary Public. Could document recipients feel secure that the person named in the document was actually the person who signed it? Would there be any protection for a document signer who doesn't really understand the contents of the document that he is being pressured into signing?

Remember, Notaries don't simply "notarize signatures" or "notarize documents." In personal, one-on-one interactions with document signers, Notaries perform the formalities of administering oaths/affirmations, and taking acknowledgments, for the execution of written instruments. They honor and follow the laws governing their activities, and rely on widely-accepted best practices when the law is silent. Thus Notaries Public protect against fraud and promote the integrity of document transactions.

We need Notaries to inspire confidence in transactions throughout this country and the world. People, businesses and governments must have confidence that their transactions will produce documents that will not be repudiated at a later time, or rejected for recording, or invalidated in a court of law as improperly executed. Notaries Public have provided these assurances for more than 2000 years - a testament to their enduring value.

**American Society of Notaries Salutes Alabama's Notaries Public
for Their Service to Our Citizens and Our Country.**


**AMERICAN SOCIETY OF
NOTARIES**

**Exclusively for Alabama 2010
Notary Conference Attendees:**

**FREE 1-Year Membership in
American Society of Notaries**

We are the nation's oldest and most distinguished professional society serving notaries public. Experience the hands-on service and technical support that make ASN members so loyal.

Your ASN Membership benefits under this special offer include:

- Tailored technical support—One of our favorite sayings is, "Don't guess—call!" It's not free, and ASN never guesses or guesses when assisting you.
- Tailored support from "Tom Tye"—valuable and always informative.
- Our web site, www.ASNotary.org, loaded with information on correct notarial practice and with membership pages.
- *American Notary* newsletter, published six times per year.
- Your ASN Membership Card, and our electronic New Member ID (by email or download) featuring:
 - ASN Code of Ethics
 - State Record-Keeping Requirements
 - Notary Supply Catalog
 - Know Your Notarial Certificates
 - Basic Notarial Certificates
 - Steps to the Expert Notarial Act...and more.

**3 EASY
WAYS TO
JOIN:**

1. Complete this form, and mail it to the address below;
2. Complete this form, and fax it to (950) 671-5165; OR
2. Email the information below to Curly@ASNNotary.org.

On line and return button portion for ASN + P.O. Box 8107 • Tallahassee, FL 32304-8107

PRINT YOUR NAME _____

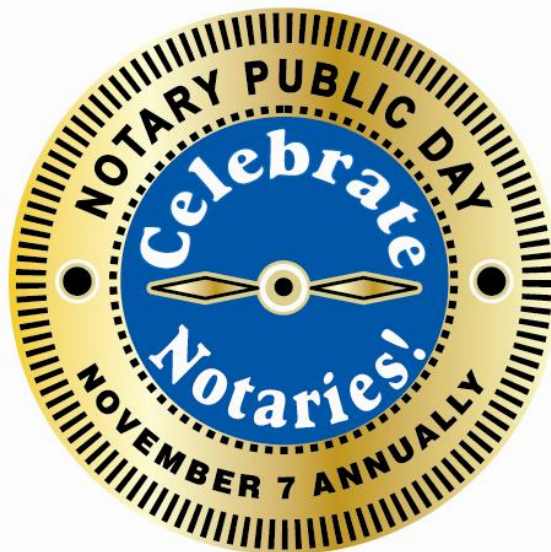
EMAIL—For Email Tax ID Information only _____ CREDIT CARD _____

COMPANY NAME (if used for your mailing address) _____

MAILING ADDRESS _____

CITY _____ STATE _____ ZIP _____

A NAME INFO - NOTARY CONFERENCE SPEAKER OVER



**Notaries... Serving
America since 1639.**